Supreme Court, U. S.
FILED
DEC 27 1977
MICHAEL RODAK, JR., CLERK

APPENDIX

Volume II

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1621

SENATOR JOHN L. MCCLELLAN, ET AL., PETITIONERS

v.

ALAN MCSURELY AND MARGARET MCSURELY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED MAY 19, 1977
CERTIORARI GRANTED OCTOBER 11, 1977

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1621

SENATOR JOHN L. MCCLELLAN, ET AL., PETITIONERS

v.

ALAN MCSURELY AND MARGARET MCSURELY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

INDEX FOR VOLUME II*

	Page
Portions of the testimony of Alan McSurely from the trial in *United States* v. *McSurely*	107
Portions of the testimony of Margaret McSurely from the trial in *United States* v. *McSurely*	132
Defendants' motion for reconsideration or certification	148
The notice of appeal	149

*Pages 1-106 of the Appendix are printed in Volume I.

[611] * * * ALAN MCSURELY was called as a witness by the Defendants and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. STAVIS:

Q. You are Alan McSurely?

A. Yes.

Q. And a defendant in this case?

A. Yes.

[612] Q. How old are you?

A. I am 33 years old.

The COURT: Mr. McSurely, if you would talk into the microphone, I think the juror on the end and all the counsel would be able to hear you better.

By Mr. STAVIS:

Q. What was the answer to that?

A. I am 33 years old.

Q. And what is your present occupation?

A. I am a shoolteacher for the sixth grade in New York City.

The COURT: Speak into the microphone so we can hear you.

The WITNESS: I teach the sixth grade in New York City.

By Mr. STAVIS:

Q. What school is that?

A. It is a school called Walton School.

Q. And when did you start teaching there?

A. I began teaching there in February of this year.

Q. What did you do before that?

A. Well, I taught the eighth grade, mathematics in Prince Georges County from September to February and before that I had a job in a factory in Lexington, Kentucky.

Before that, I was an organizer in Pikeville County, [613] Kentucky for the whole southern mountain region in West Virginia and western Virginia, Kentucky, and Tennessee.

Q. What were you—go ahead.

A. Before that, we are back into '64 and '65 and '66 now. I was working for the United Planning Organization in Washington.

I was helping organize all of the poverty programs, the head start programs in Washington and all the suburbs of the District and then I was a Director of the suburban programs for about two years and then I worked up—worked in setting up the Neighborhood Planning Council of the District, and it was divided into 20 sections so that the citizens that lived in the various communities could have some control over the programs that went on in their own neighborhoods.

My wife and I helped set those things up with the help of the D.C. Recreation Department, the School Board and the D.C. Government and other D.C. agencies.

Q. That brings you back to what year?

A. Well, I started to work at UPO in December of '64 and prior to that, I was a probation counselor with the Juvenile and Domestic Relations Court in Fairfax, Virginia, in which I worked with young people and their parents who had gotten into trouble.

Q. The young people got into trouble and not the parents?

A. Sometimes parents, too.

[614] Prior to that I was a schoolteacher in Washington at the Capitol Radio Engineering Institute and prior to that I was a mailman, letter carrier in Arlington and a taxi driver in Arlington and Washington.

Prior to that I went to school in Chapel Hill, North Carolina.

Q. When did you graduate from Chapel Hill in North Carolina?

A. In 1959.

Q. And have you been extending your educational activities since then?

A. Yes.

When I started to work at the Juvenile Court in Fairfax, I began working on my Master's Degree in psychology at G.W. and have been working on that ever since.

I am writing my thesis right now on schools.

Q. What is your thesis about?

A. The thesis is about the need for parents and teachers and students to form alliance together to help change the schools and particularly in the major cities because the schools have become sort of irrelevant to the needs of the kids and needs of the community and to try to use that alliance, that is, parents and teachers and students to begin to fight against the

school board and the city Governments that have been controlling the schools for so long, so that the schools [615] will meet the needs of the people.

Mr. STAVIS. Will you mark this for identification.

(Whereupon, Defendant's Exhibit No. 2 was marked for identification.)

By Mr. STAVIS:

Q. Mr. McSURELY——

The COURT. Would you show that to counsel.

Mr. STAVIS. I will have it marked first.

The COURT. I think it should be shown to counsel.

(Whereupon, the Exhibit was shown to Mr. Bress.)

Mr. BRESS. May we approach the Bench?

The COURT. Yes.

(At the Bench:)

Mr. BRESS. Your Honor, I object to any use of this kind of an Exhibit.

The Exhibit is, appears to be a typed or mimeographed volume entitled, "Neighborhood Planning Guide Book".

I did not object during the direct examination thus far of this witness. I think it is to me an aggressive calculated effort to get him into the programs and to see whether or not some jurors can be influenced by some of the programs on which this man has worked.

This is an appeal to prejudice and passion and I think that counsel said before the case resumed on the defense's case that he would adhere to the issues involved in this case.

[616] And this could not be farther from the issues in this case.

Mr. STAVIS. If Your Honor please, the background of this witness is an essential part of this case before the jury could possibly appraise his willfulness.

The COURT. What you have here——

Mr. STAVIS. This document was particularly a document that was written by the defendant.

The COURT. You have already been permitted to go into some detail into this witness' background but this is something else.

Mr. STAVIS. There was a statement that was introduced into evidence by Senator McClellan and that statement and in the context in which it was introduced in the context of the hearing in which the defendant appeared and that testimony would

make it appear that the defendant is some wild fanatical individual and there have been numerous references to Stokely Carmichael and riots, et cetera.

The background of this defendant, the actual works and writings that he has done shows that he is just a——

Mr. BRESS. Rioting.

Mr. STAVIS. That was uncalled for, Mr. Bress.

The COURT. That was unnecessary, Mr. Bress.

Mr. BRESS. I will withdraw that. I said that facetiously.

Mr. STAVIS. It shows that he is so far removed from [617] that image created by Senator McClellan that I think the jury is entitled to see it and this document shows the kinds of things that this witness has done and what he stands for.

The COURT. Your proffer has been made for the record.

The objection is sustained.

Mr. BRESS. May we have it understood that this kind of an appeal for passion and prejudice will not continue?

The COURT. It has no place in a case like this.

I want to caution you, Mr. Stavis, that when you have an Exhibit marked for identification, show it to counsel before you show them to the witness.

Mr. STAVIS. Excuse me, Your Honor. I simply want to state what my understanding is of the way Exhibits are marked and handled in the Courts of both New York and New Jersey and that is that any time an Exhibit is marked for identification by the Clerk, it is then identified by the witness and it is shown to your adversary when it is offered and not prior.

The COURT. Here you will show them to counsel as you have them marked for identification.

Mr. STAVIS. I understand that.

I wanted you to understand what my practice was before.

The COURT. The practice here is different.

(In open Court:)

Mr. STAVIS. Mr. Bress, will you please come back to the Bench?

[618] The COURT. You may have it marked and then show it to counsel.

Mr. STAVIS. I will do that.

(Whereupon, Defendants' Exhibit No. 3 was marked for identification.)

(Defendants' Exhibit No. 3 was shown to Mr. Bress.)

Mr. BRESS. May we approach the Bench?

The COURT. Yes.

(At the Bench:)

Mr. BRESS. I object. This is the identical thing.

Mr. STAVIS. Now, I had it marked for identification as Defendants' No. 3.

The COURT. For the record this is a special report on the United Planning Organization.

Mr. STAVIS. A large part of it was written by Mr. McSurely.

The COURT. There is nothing in here that indicates that it was written by Mr. McSurely.

Mr. STAVIS. He would testify about that.

The COURT. Your proffer has been made for the record.

The objection is sustained.

Mr. BRESS. Is there anything like this that you have left?

Mr. STAVIS. Excuse me, Mr. Bress.

The COURT. Go ahead.

Mr. STAVIS. I very carefully called you to the Bench [619] so that we would not——

Mr. BRESS. I appreciate that.

I thought we might expedite this.

Mr. STAVIS. I will present my case in the normal course.

The COURT. You may do so.

(In open Court:)

By Mr. STAVIS:

Q. When did you meet Margaret McSurely?

A. I met her in 1966.

She was working at the United Planning Organization, the same place I was working.

Q. And you married when?

A. We were married the first of 1967.

Q. And the two of you moved to Kentucky when?

A. We moved there on April 1st of 1967, April Fool's Day.

Q. And at that time you had a job there?

A. Yes, sir. I had been hired as Director of the training program for the Appalachian Volunteers.

This was just another poverty group that was working in the coal fields of eastern Kentucky and West Virginia and the western part of Virginia.

Q. And how long did you live in Kentucky?

A. Oh, we lived in the State of Kentucky from April Fool's [620] Day until about July of '69 of last year when I—when we moved up and I took another job teaching school.

We lived in the mountainous part of eastern Kentucky.

You see Kentucky is divided up——

Mr. BRESS. The answer is not responsive.

The WITNESS. It is divided up into the mountains and the blue ground state.

The COURT. You have answered the question.

By Mr. STAVIS:

Q. When did you leave the mountainous part of Kentucky?

A. We left very abruptly on—at 2:00 o'clock in the morning on December 13, 1968 when our house was dynamited and nearly killing my wife and my baby and myself and we moved all of our stuff out and moved to Lexington, Kentucky.

Q. And then you moved up to this area and started teaching here?

A. That is correct.

I had a job in Lexington for a short period of time and then we moved up here.

Q. Now, I want to refer you to the date of November 8, 1968 and that was an occasion that you heard Mr. Brick testify about.

You met him in Pikeville that day?

A. Yes, he was there.

It was actually the Post Office, the U.S. Post Office [621] and they have the offices in there of the Federal Marshal, the man that was on yesterday, Joe Mullins, and he was there for two purposes.

Q. Hold up.

Mr. BRESS. I object.

The COURT. The objection is sustained.

By Mr. STAVIS:

Q. You met him there that day?

A. That is correct, right.

Q. Now, was that a day on which there was returned to you certain documents that had been seized on August 11, 1967?

A. Yes, we had——

Q. Yes or no?

A. Yes.

Q. Now, I think you heard some testimony about these documents being in a jail cell?

A. Yes.

Q. And was that the day you received all those documents back?

A. Yes.

Q. And did you spend any time with Mr. Brick that day?

A. Yes. We spent about an hour and a half together, I would say, going over this long list that he had.

Q. Did he have a list?

A. Yes, he had—he brought that over to me.

[622] Q. I show you a document which has previously been marked as Defendants' Exhibit 8 for identification and ask if you will tell me whether that is the list that you spent about an hour and a half with Mr. Brick going over?

A. Yes, this is it.

Mr. BRESS. May I see it, Mr. Stavis?

Mr. STAVIS. Yes.

It was previously marked.

Mr. BRESS. Thank you.

May we approach the Bench?

The COURT. Yes, certainly.

(At the Bench:)

Mr. BRESS. This document purports to be a receipt signed by Thadeus Scott described as, I think, Deputy Sheriff or Deputy Marshal of some kind in Kentucky.

This is the receipt given to Mr. Brick of the Senate Committee for the items previously received by Mr. Brick and now fully returned to the custody of those who were charged with custody of them under the order of the Court as previously shown by the evidence or by the arguments.

I submit, Your Honor, that we have had a ruling about the legal effect of the State's seizure, about the effect of the Government's inspection of the documents after they were seized.

It is clear that the Government took the documents [623] shown or were given the documents shown and they were returned and so the Committee had nothing.

This is the receipt for the return of those documents and it has nothing at all to do with the issues in this case as to whether or not the defendants were served with a subpoena to produce documents and didn't comply.

The COURT. What is the purpose?

Mr. STAVIS. Mr. Bress did not limit himself to the proofs that he just stated, but over our objection, introduced evidence and a purported conversation between Mr. McSurely and Mr. Brick

Mr. STAVIS. What was that last question?

(Whereupon, the last question was read.)

Mr. STAVIS. I would like to offer this in evidence at this time.

The COURT. It will be received.

(Whereupon, Defendants' Exhibit No. 4 was marked for identification, and received into evidence.)

By Mr. STAVIS.

Q. Now, that document purports to be a receipt signed by Thadeus Scott, does it not?

A. Yes.

Q. Whose signature appears on the bottom of each page?

A. I guess that is Thadeus Scott's initials.

Q. And he signed the back page?

A. Yes.

Q. Was this—were these the documents that Mr. Brick had taken from among the documents that had been seized from you and Margaret on August 11, 1967?

Mr. BRESS. I object.

The WITNESS. These were the ones that he said he took. I guess this is the complete list. There was no way of telling.

By Mr. STAVIS:

[626] Q. You would have no way of knowing?

A. No.

Q. And you were going over this with Mr. Brick and what was going—what was being said between you as you were going over this?

A. Mr. Brick had a silly little grin on his face as we talked.

He talked about his authorship of children's books and my writings that he had been looking at and as he handed me personal love letters of my wife that he had taken up to the Senate and viewed and he would giggle and say, now here's a letter from Drew Pearson to Margaret which says, Dearest Cucumber and he would say, mark that off, and then he would hand me another one and he would say here's another one.

What do you think of this one?

He would giggle and it made me very sick to think that a U.S. Government official had come down to Pike County and would steal stuff from the coal operators who had stolen it from us originally and taken it up there, 260-some letters and had taken it up there and was passing it around in the Senate. And if this was the attitude that he took towards it, I knew what at-

in which Mr. McSurely was supposed to have made some statements which Mr. Bress had introduced for the purpose of showing the intent of Mr. McSurely and which conversation was something to the effect that Mr. McSurely had contempt for the Committee.

Now, in so doing, Mr. Bress has opened the door because that conversation occurred at the conclusion of Mr. McSurely's spending an hour and a half with Mr. Brick reviewing, as you will see by all these check marks, reviewing everyone of these items and that Mr. McSurely is prepared to testify that he spent that hour and a half with Mr. Brick and they were reviewing and looking at every one of these items, and that Mr. McSurely indeed did express contempt for Mr. Brick and for those people who had taken his wife's personal and intimate papers, as you will see in those documents.

[624] Now, since Mr. Bress has introduced testimony about the conversation which was the conclusion of an hour and a half review of these documents, Mr. McSurely is entitled to testify as to what the circumstances were and what he did in fact say.

Mr. BRESS. If the Court please, you will recall that I limited it only to the service and that it was contempt and so forth.

The COURT. I am inclined to agree with the Government's position, but in an effort to allow you some latitude, I am going to permit this Exhibit to be mentioned, but you are not going to go through everyone of these.

Mr. STAVIS. No.

Mr. BRESS. Well, I think, Your Honor——

The COURT. I agree with you.

Mr. BRESS. If he goes—may I—I would like to have the Court reconsider.

There was a conversation at the time of service. I only offered that conversation and the fact that Mr. Brick had told Mr. McSurely that the refusal to comply would constitute contempt of Congress and he said that is something he had plenty of.

Now they could have talked about religion and they could have talked about politics and the rest of it wasn't relevant nor is this.

The COURT. I understand your position, but I am [625] going to permit them to use this.

(In open Court:)

titude Senator McClellan and some of the older men who happened to work on that Committee had towards these letters, and it was very clear to me what had been going on and I had just suspected it up to then, but this made it very [627] clear as to the attitude he had towards it and I was really getting mad.

Q. What did you say to him?

A. Well, when he finished handing all that stuff back with his little grin, and I had to sign all of it and Margaret was so embarrassed that she went away and I took care of doing that.

Then I walked out and then he said to me, now, we are going to get these documents back. If you don't give them to us, we are going to—you are going to be in contempt of Senator McClellan and his Committee.

I said I am full of contempt for Senator McClellan and his Committee and you and I hate your guts.

Q. Now, Mr. McSurely—at this time, Your Honor, in following the practice of my worthy adversary, I would like to read to the jury Defendants Exhibit 4 in evidence.

The COURT. It is in evidence. You may pass it to the jury.

Mr. STAVIS. I am sorry?

The COURT. If it is a lengthy document, why don't you pass it to the jury.

Mr. STAVIS. I will read it quickly.

I don't think I will take as much time to read this document as Mr. Bress did.

The COURT. All right.

[628] Mr. STAVIS. It reads as follows:

"Receipt is hereby acknowledged of the documents described below, which were received by John Brick, investigator on the staff of the Senate Permanent Subcommittee on Investigations, from Thaddeus Scott, detective on the staff of the Commonwealth's Attorney for Pike County, Kentucky. The documents described below comprise all documents which have been in the possession of the Subcommittee, and no copies of any documents have been retained by the Subcommittee.

"1. Letter dated March 14, 1967, to Henry Binford from Margaret McSurely.

"2. Undated letter to the Superintendent of Pike County Schools from Ester Mae Heifetz.

"3. Undated and unsigned letter, addressed to 'Dear Mother.'

"4. Letter dated October 23, year not specified, addressed 'Dear Millie,' from 'Margaret.'

"5. Undated and unsigned letter to, 'Dear Sandy.'

"6. Unsigned and undated series of entries on 3" by 5" cards.

"7. Typed background resume, dated May 18, 1966, of Margaret H. Laughrun.

"8. Unsigned letter dated May 23, 1967, to 'Dear Mother.' [629] "9. Letter dated February 9, 1964, to 'Dear Margaret,' signed 'Jack.'

"10. Typed notes apparently designed as an outline for a proposed book.

"11. Letter dated October 22, 1964, addressed, 'Dearest M,' from 'Jack.'

"12. Envelope from, 'p.o. box 564, Atlanta, Georgia,' addressed to Margaret Laughrun in Jackson, Mississippi, bearing postmark dated October 23, 1964.

"13. Letter dated October 13, 1964, addressed to, 'Dearest M,' from 'Jack.'

"14. Envelope from the Student Non-Violent Coordinating Committee in Atlanta, Georgia, addressed to Margaret Laughrun in Batesville, Mississippi, dated September 13, 1964.

"15. Unsigned and undated series of notes relating to a visit to a motel.

"16. Letter dated July 29, 1967, addressed to 'Dear Charles,' and signed, 'Al.'

"17. Letter dated March 12, 1967, to Jim Aronson, from Al McSurely.

"18. Letter dated July 19, 1967, addressed to Bob Garbo, unsigned.

"19. Typewritten documents entitled, 'Notes on [630] Richmond, Kentucky.'

"20. Letter dated May 23, 1967, addressed to 'Dear Jim, and others there in Bloomington,' signed, 'Al McSurely.'

"21. Letter dated May 23, 1967, addressed to 'Dear Jim,' and signed, 'Al.'

"22. Letter dated April 16, year unspecified, addressed to 'Dear Justin', from Margaret McSurely.

"23. Letter dated June 25, 1967, addressed to David Walls from Margaret McSurely.

"24. Letter dated February 5, 1967, on the letterhead of Institute for Policy Studies, Washington, D.C., addressed to, 'Al and Margaret,' and signed, 'Sue.'

"25. Letter dated March 30, 1967, on the letterhead of Board of National Missions of the United Presbyterian Church in the U.S.A., addressed to Alan McSurely from Philip H. Young.

"26. Typewritten notes, apparently page three of a prospectus for a newspaper.

"27. Typewritten page headed, 'Discussion Draft,' and entitled, 'Cool it, Baby.'

"28. Letter dated June 4, 1967, addressed to 'Dear Margaret and Al' and signed, 'Esther.'

[631] "29. Letter dated June 8, 1967, addressed to Senator John Sherman Cooper from Margaret Lauren McSurely.

"30. Letter dated Saturday, April 1, 1967, on the letterhead of Southern Conference Educational Fund addressed to 'Dear Al,' from Anne Braden, with an attachment listing various officials of the Southern Conference Educational Fund.

"31. Letter dated November 14, year unspecified, addressed, 'Dear John,' and signed, 'Margaret.'

"32. Typewritten document of 12 pages, headed Southern Conference Educational Fund (SCEF) entitled, 'A Budget and Outline of Work for 1967.'

"33. Unsigned letter dated April 20, 1967, addressed to 'Dear Esther.'

"34. Letter dated January 25, 1967, addressed to 'Dear Wayne and Gail and Alan and Jan,' from 'Margaret L.'

"35. Unsigned letter dated February 12, 1967, addressed to, 'Dear Sue.'

"36. Unsigned letter dated July 12, 1967, addressed to 'Dear Anne and Carl.'

"37. Letter on the letterhead of Southern Conference [632] Educational Fund dated July 21, 1967, addressed to, 'Dear Al & Margaret,' signed 'Anne.'

"38. Letter dated July 16, 1967, addressed to Sandy Rosenblum and signed, 'Margaret and Al.'

"39. Letter dated July 23, 1967, addressed to, 'Dear Don and Carol,' signed, 'Al'.

"40. Typewritten document headed, 'Rough Agenda of First SCEF Training Session.'

"41. Letter dated April 4, 1967, addressed to Al McSurely, signed, 'Topper.'

"42. Typewritten document headed, 'Staff of Southern Conference Educational Fund as of 11/21/66.'

"43. Unsigned letter dated February 10, year unspecified, addressed, 'Dear Wayne and Gail.'

"44. Letter dated May 29, 1967, addresed, 'Dear Al,' signed 'Howie.'

"45. Two page outline of a document entitled 'Radical Challenge to the Decidees of America,' by Alan McSurely.

"46. Nine page document entitled, 'Ideas for Book.'

"47. Unsigned letter dated July 19, 1967, addressed, 'Dear Molly.'

[633] "48. Unsigned letter dated April 10, 1967, addressed, 'Dear Anne and Carl.'

"49. Letter dated August 2, 1967, addressed, 'Dear Mike,' signed, 'Al.'

"50. Unsigned letter dated May 10, 1967 addressed, 'Dear Bob and Dottie.'

"51. Unsigned letter dated Tuesday, May 2, year unspecified, addressed to, 'Dear Mary.'

"52. Letter dated May 24, 1967, addressed to, 'Dear Sue,' from 'Margaret L. McS.'

"53. Unsigned letter dated August 11, year unspecified, addressed to 'Dear Folks.'

"54. Letter dated July 25, 1967, on the letterhead of the "National Conference for New Politics,' addressed to Alan McSurely from William F. Pepper.

"55. Letter dated July 13, 1967, addressed to, 'Dear Anne and Carl," signed 'Al,' with attachments consisting of a letter dated June 9, 1967 addressed, 'Dear Bill Pepper',' signed by, 'Al McSurely'; letter dated July 5, 1967, on the letterhead of 'The National Conference for New Politics,' addressed to Al McSurely, signed 'Bill Pepper'; a two-page memorandum headed, 'National Conference for [634] New Politics,' signed by Bill Pepper; one-page memorandum headed, 'National Conference for New Politics,' signed by Bill Pepper.

"56. Unsigned letter dated June 9, 1967, addressed, 'Dear Sharlene.'

"57. Typewritten document headed, 'SCEF Financial Picture for First Six Months of 1967.'

"58. Letter dated May 22, 1967, addressed, 'Dear Gary and Gaunnie,' signed, 'Al.'

"59. Letter dated July 24, 1967, addressed, 'Dear J.R.' signed by Anne Braden.

"60. Letter dated April 27, 1967, addressed 'Dear Carl and Ann,' signed, 'Al.'

"61. Unsigned letter dated July 11, 1967, addressed, 'Dear Hamis.'

"62. Undated letter addressed 'Dear Jack,' signed 'Al.'

"63. Two-page outline entitled, 'Ideas for Analysis and Program.'

"64. Typewritten document entitled, 'Rough Agenda of First SCEF Training Session.'

"65. Unsigned letter dated June 9, 1967, addressed 'Dear Esther.'

"66. Unsigned letter dated July 13, 1967, addressed to Harvey Richards.

[635] "67. Unsigned letter dated July 28, 1967, addressed 'Dear John and Kathy.'

"68. Letter dated May 21, 1967, addressed, 'Dear Paul,' signed 'Al McSurely.'

"69. Unsigned letter (incomplete) dated July 29, 1967, addressed 'Dear Julian.'

"70. Unsigned letter dated June 22, 1967, addressed 'Dear Bob and John and Sue.'

"71. Handwritten letter dated June 7, 1966, addressed to Alan McSurely, signed 'Mike.'

"72. Letter dated March 24, 1967, addressed to Mrs. Edith Easterland, from Alan McSurely.

"73. Letter dated January 16, 1967, addressed, 'Dear Carl and Anne,' from Margaret Lauren.

"74. Letter dated March 18, 1965, addressed, 'Dear Margaret,' signed with initials 'M.C.'

"75. Letter dated July 28, 1967, addressed 'Dear Bill and Chris,' signed, 'Al.'

"76. Document of 23 pages entitled, 'Across the U.S. in Early 1967.'

"77. Letter dated July 28, 1967, addressed, 'Dear Al,' signed by Joseph Molloy.

"78. Undated letter addressed to 'Superintendent, Pike County Schools' from Esther Mae Heifetz.

"79. Unsigned letter dated May 30, 1967, addressed [636] to, 'Dear Carl, Ann and Nessa or other Printer.'

"80. Letter dated October 23, year unspecified, addressed to 'Dear Millie' from 'Margaret.'

"81. Unsigned letter dated June 26, 1967, addressed 'Dear Frank.'

"82. Unsigned letter dated July 28, 1967, addressed to Box R 570 .

"83. Unsigned letter dated May 31, 1967, addressed 'Dear Gene.'

"84. Document dated November 23, 1966, on printed form of United Planning Organization.

"85. Single page document entitled 'Prologue.'

"86. Letter dated April 28, 1967, on letterhead of Southern Conference Educational Fund, addressed to Dr. John A. Scott and signed, 'Carl.'

"87. Single page document dated July 11, 1967, entitled, 'McSurely's Car Expense from June 8 through July 11, 1967.'

"88. Single page document entitled 'Outline for Facts about the War in Vietnam for Would-Be Soldiers in Appalachia.'

"89. Single page document entitled 'Organizations Which Have Received First Draft of Vocations [637] for Social Change.'

"90. Undated and unsigned letter on the letterhead of the Jefferson Davis Hotel, addressed, 'Dear Folks.'

"91. Letter dated June 1, 1967, addressed, 'Dear Al & Margaret,' signed, 'Bill.'

"92. Letter dated July 26, 1967, addressed, 'Dear Al and Mgt.' signed 'Jack.'

"93. Unsigned letter dated May 10, addressed 'Dear David.'

"94. Letter dated June 19, 1967, addressed, 'Dear Al,' from Toby Brooks and George Brosi.

"95. Two-page typed document, unsigned, dated January 1, 1967.

"96. Birth certificate of Alan McSurely.

"97. Undated and unsigned page of handwritten notes.

"98. Unsigned letter dated June 22, 1967, addressed 'Dear Mike.'

"99. Letter dated May 23, 1967, addressed, 'Dear John,' from 'Al and Margaret McSurely.'

"100. Single page outline of an article.

"101 U.S. Civil Service Commission document Form 227.

252-527—77——8

"102. Four-page Federal employment form, 'Statement [638] of Personal History' for Alan McSurely.

"103. Letter dated February 10, 1967, addressed, 'Dear ACCESSers,' signed by Alan McSurely.

"104. Pages 4, 7, 8 and 9 of an untitled composition of which page 4 begins, 'Southern political puppets . . .'

"105. Letter dated June 29, 1967, addressed, 'Dear Howie,' signed 'Al.'

"106. Letter dated May 23, 1967, addressed, 'Dear Jim,' signed 'Al and Margaret.'

"107. Letter dated June 14, 1967, on the letterhead of 'Leslie Knott, Letcher, Perry Community Action Council,' addressed to 'Al McSurely,' signed by James E. Young.

"108. Two-page document headed 'Day #2.'

"109. Two-page document entitled 'Two sides of Socialism.'

"110. Four-page document entitled, 'A White Paper on the South—1967.'

"111. An unsigned letter dated May 23, 1967, addressed, 'Dear Esther (and Joel if he's around).'

"112. Single page document entitled 'People Who Have Been Asked to Write Essays for Vocation for Social Change.'

[639] "113. Letter dated July 13, 1967, addressed, 'Dear Bill,' from 'The Mountain Energizer, Al.'

"114. Letter dated July 19, 1967, addressed, 'Dear Mary,' signed 'Al.'

"115. Unsigned letter dated Thursday, 22 June, year not specified, addressed 'Dear Jack.'

"116. Two-page document, undated and unsigned, headed, 'News from the Mountains.'

"117. Single page handwritten document consisting of an outline.

"118. Single page document entitled, 'To the Appalachian Volunteers, Incorporated.'

"119. Single page unsigned document dated 12 January 1967, relating to a statement about DD Form 98.

"120. Letter dated May 23, 1967, addressed, 'Dear Fred,' signed 'Al.'

"121. Birth certificate of Margaret Herring.

"122. Handwritten document consisting of a graph entitled, 'Similarities of Appalachia and Vietnam.'

"123. Hand-drawn map of that part of Asia formerly known as Indo-China.

"124. Handwritten document headed 'Training Program for PCU.'

[640] "125. Letter dated May 23, 1967, addressed to Kunstler, Kunstler and Kinoy, signed 'Al.'

"126. Unsigned letter dated June 2, 1967, addressed 'Dear Dinky.'

"127. Unsigned letter dated May 23, 1967, addressed, 'Dear Decca and Bob.'

"128. Letter dated May 23, 1967, addressed 'Dear Clint' signed 'Al.'

"129. Unsigned letter dated May 9, 1967, addressed to Dr. Robert Coles.

"130. Unsigned, undated report on Edith Easterling, addressed to Bill Wells.

"131. Two-page mailing list headed 'Conference on Radical Vocations in the White Community.'

"132. Two-page brochure on 'The Marrowbone Folk School.'

"133. One-page brochure cover entitled, 'The Marrowbone Folk School.'

"134. Three-page document, dated April 17, 1967, entitled, 'Site Proposal for Appalachian Field Study Center.'

"135. Unsigned letter dated April 10, 1967, addressed to Harry W. Caudill.

"136. Letter dated June 4, 1967, addressed 'Dear Margaret and Al,' signed 'Esther.'

[641] "137. Undated single page resume of background of Margaret Herring Laughrun.

"138. Unsigned letter dated August 4, 1967, addressed, 'Dear Margaret.'

"139. Unsigned letter dated September 10, 1965, addressed 'Dear Bill Cremer.'

"140. Western Union press message dated October 9, 1964, addressed 'Dear Young Lady,' signed 'P.'

"141. Unsigned letter dated May 23, 1967, addressed, 'Dear Jeanne Wallace.'

"142. Letter dated April 15, 1967, addressed, 'Dear Mr. McSurely,' signed by Jeanne Wallace.

"143. Letter dated June 16, 1967, on the letterhead of International Publishers, addressed to 'Al McCorley,' signed by James S. Allen.

"144. Letter dated March 28, 1967, on the letterhead of 'Monthly Review,' addressed to Mrs. Margaret Lauren, signed by Edward Borstein.

"145. Unsigned letter dated March 24, year unspecified, addressed, 'Dear Anne.'

"146. Withholding tax statement 1961 for Margaret H. Laughrun.

"147. Three-page document entitled, 'A proposal for [642] a Library of Basic Theoretical Books and Journals for Organizers of the Radical Mountain Movement.'

"148. Letter dated August 2, 1967, addressed, 'Dear Mike,' signed 'Al.'"

The COURT. Will counsel come to the Bench?

(At the Bench:)

The COURT. I want to admonish you that if you are making a statement to the jury, you will stand. Do not sit on counsel table.

Mr. STAVIS. I am sorry.

The COURT. Very well.

(In open Court;)

Mr. STAVIS. I will continue reading.

"149. Letter dated July 13, 1967, on the letter head of the Southern Conference Educational Fund, addressed, 'Dear Al & Margaret' signed by Anne Braden.

"150. Minutes of meeting dated January 11, 1964, held in Washington, D.C., at Mrs. Hamer's.

"151. Two-page resume of background of Margaret H. Laughrun dated May 18, 1966.

"152. Two-page outline of a proposed book.

"153. Five-page brochure by the National Conference for New Politics entitled, 'Don't Mourn for [643] Us . . . Organize.'

"154. By-laws of the Appalachian Volunteers.

"155. Volume 1, #2, (mimeographed) of 'Changes.'

"156. Xerox copy of Volume 1, #2 of a pamphlet entitled, 'Changes.'

"157. Two-page address list of persons in the United States.

"158. Document of 27 pages consisting of names, addresses and telephone numbers of various persons in the United States.

"159. Unsigned letter dated March 27, 1967, addressed, 'Dear Joe.'

"160. Unsigned letter dated April 10, year unspecified, addressed 'Dear Anne and Carl.'

"161. Hand-drawn map of that area of S.E. Asia formerly known as Indo-China.

"162. Handwritten graph entitled 'Similarities of Appalachia and Vietnam.'

"163. A 20-page article entitled 'The Care and Feeding of Power Structures Revisited.'

"164. Two-page brochure published by the Committee for Independent Political Action.

"165. Letter dated October 3, year unspecified, addressed 'Dear Drew', signed 'Margaret.'

"166. Single page outline, headed, 'Assumptions.'

[644] "167. Letter dated April 13, year unspecified, addressed, 'Dear Anne and Carl,' signed, 'Margaret.'

"168. Letter dated May 22, 1967, addressed, 'Dear Bill and Chris,' signed 'Al.'

"169. Two-page document dated January 1, 1967.

"170. Two-page document entitled, 'Outline of the Basic Southern Mountain History Book.'

"171. Letter dated May 23, 1967, addressed, 'Dear Bob and Decca,' signed 'Al.'

"172. Letter dated March 24, 1967, addressed, 'Dear ACCESSers,' signed Alan McSurely.

"173. Single page document beginning 'Siphoning the fear out of the world . . .'

"174. Single page document entitled, 'Is this Fair?'

"175. Letter dated May 23, 1967, addressed, 'Dear Sirs,' from Alan McSurely.

"176. Letter dated July 5, 1967, on the letterhead of the National Conference for New Politics addressed to Alan McSurely from William F. Pepper.

"177. Unsigned letter dated April 20, 1967, addressed, 'Dear Esther.'

"178. Letter dated May 23, 1967, addressed 'Dear Pat and David,' signed 'Al.'

"179. Letter dated May 23, 1967, addressed, 'Dear [645] Fred,' signed 'Al.'

"180. Letter dated May 21, 1967, addressed, 'Dear Betty' from 'Margaret.'

"181. Unsigned letter dated June 26, 1967, addressed to 'Dear Frank.'

"182. Letter dated January 15, 1967, addressed, 'Dear Charles and Pam,' signed 'Al.'

"183. Unsigned document dated April 16, 1967, entitled, "The Side I am on, Boys!'

"184. Letter, date illegible, addressed, 'Dear Al.' signed, 'Gary.'

"185. Single page document, apparently the agenda of a four-day conference in Washington, D.C.

"186. Four-page document entitled 'A SCEF Program for the Mountain . . .' with part of that title obliterated.

"187. Memorandum dated May 17, 1967, from Morton Thomas to SCEF.

"188. Letter dated March 27, 1967, addressed, 'Dear Milt,' signed 'Al.'

"189. Five-page memorandum to Appalachian Volunteer Staff members from Al McSurely.

"190. Three-page rough draft of an Appalachian Volunteer training session.

"191. Two-page brochure of 'The Organizers Library [646] Series of the Southern Conference Educational Fund.'

"192. Two-page work record of Alan McSurely April 16–April 28, year unspecified.

"193. Letter dated March 27, 1968, addressed, 'Dear Gary,' signed 'Al.'

"194. Letter dated June 29, 1967, addressed, 'Dear Charlie,' signed, 'Al.'

"195. One page outline of Southern Mountain Project Staff Meeting, June 3, 1967.

"196. One page document entitled 'Ideas for Book.'

"197. Seven-page article entitled, 'The Dog and the Tick.'

"198. Certificate of Marriage, July 17, 1967, for Alan McSurely and Margaret H. Laughrun.

"199. Identification certificate for Margaret Herring Laughrun issued by the Council of Federated Organizations, Jackson, Miss.

"200. Letter dated March 14, 1967, addressed to Henry Binford, from Margaret Lauren McSurely.

"201. Letter dated October 6, 1964, on flight letterhead of North Central Airlines, addressed, 'Dearest Cucumber,' and signed, 'Drew.'

[647] "202. Single page document entitled, 'To the Appalachian Volunteers, Inc., by Al McSurely.

"203. Letter dated April 16, year unspecified, addressed, 'Dear Mort,' from Margaret.

"204. Six-page handwritten outline, title illegible.

"205. Single page outline entitled, 'The Southern Mountain Program.'

"206. Letter dated April 16, year unspecified, addressed, 'Dear Mort,' from 'Margaret.'

"207. Unsigned letter dated June 22, 1967, addressed, 'Dear Bob, John and Sue.'

"208. Unsigned letter dated June 9, 1967, addressed, 'Dear Sharlene.'

"209. Letter dated March 27, 1967, addressed to 'Dear Joe," signed, 'Al.'

"210. Unsigned letter dated May 23, 1967, addressed, 'Dear Esther,' (and Joel if he's around.)'

"211. Unsigned and undated letter, addressed to 'Dear Anne and Carl.'

"212. Letter dated August 11, year unspecified, addressed to 'Dear Folks' from 'Margaret & Al.'

"213. Letter dated May 23, 1967, addressed to 'Dear John,' from 'Al and Margaret McSurely.'

"214. Single page document relating to Kangaroo.

[648] "215. Letter dated July 28, 1967, addressed to 'Dear Bill and Chris,' signed 'Al.'

"216. Two copies of a three page document entitled, 'Tentative Schedule of the April 24–26 Training Session at the Breaks.'

"217. Single page document giving addresses of Drew Pearson's office staff.

"218. Letter dated July 24, 1967, addressed 'Dear J.R.,' signed by Anne Braden.

"219. Five-page memorandum to Appalachian Volunteer Staff from Al McSurely.

"220. Single-page document relating to famed politcal symbols.

"221. A single-page document entitled 'Step 3.'

"222. A single-page document entitled 'Sample Minutes of the First Meeting.'

"223. Unsigned letter dated May 23, 1967, addressed 'Dear Mother.'

"224. Unsigned and undated letter addressed 'Dear Mother.'

"225. Two page outline entitled 'Ideas for Analysis and Program.'

"226. Two copies of a single-page outline entitled 'Rough Agenda of First SCEF Training Session.'

"227. Undated letter addressed, 'Dear Jack,' signed 'Al.'

[649] "228. Unsigned letter dated July 29, 1967, addressed 'Dear Julian.'

"229. Letter dated July 13, 1967, addressed 'Dear Bill' and signed 'The Mountain Energizer, Al.'

"230. Mimeographed sheet consisting of (1) list of persons now on the SNGG payroll and (2) list of persons removed from the SNGG payroll.

"231. A mimeographed sheet containing a list of persons whose names have been removed from the SNGG payroll and a list of persons added to the SNGG staff.

"232. A carbon copy of an unsigned letter dated June 22, 1967, addressed 'Dear Bob, John and Sue.'

"233. A mimeographed pamphlet entitled 'A New Political Union.'

"234. A mimeographed copy of a document entitled 'Maximum Feasible Participation.' by Alan McSurely."

By Mr. STAVIS:

Q. Now, and the conversation between you and Mr. Brick about which you testified, occurred at the conclusion of your going through this with him?

The COURT. Try not to lead, Mr. Stavis.

Ask your question and let him answer.

[650] By Mr. STAVIS:

Q. Did the conversation between you and Mr. Brick occur at the conclusion of your going through that list?

Mr. BRESS. I object. Leading.

The COURT. The objection is sustained.

By Mr. STAVIS:

Q. At what time did the conversation between you and Mr. Brick occur on November 8, 1968?

A. We were conversing the whole time that he was handing these documents to me, and I was supposed to be checking them off.

As I said, he was—he had this real silly grin on his face and he handed them to me——

The COURT. You testified to that, Mr. McSurely.

The question is what time?

The WITNESS. It was during the time that he was handing this—these back to me.

By Mr. STAVIS:

Q. When he handed these things back to you, did you and he look at the particular items?

A. Yes.

Q. Was some of them typed?

A. Yes.

Q. Were some of them handwritten?

A. Yes.

[651] Q. And did he make any comments about any of the items.

A. Well, he would say, now, here is a good one and he would hand it to me.

Mr. BRESS. This is repetitious, I object.

The COURT. The objection is sustained.

By Mr. STAVIS:

Q. Did you know the lady who became your wife in 1964?

A. No, I first met Margaret in 1966 at the UPO.

Q. Had you in Kentucky heard that the contents of some of those personal letters of your wife had been the subject of gossip and discussion?

Mr. BRESS. I object.

The COURT. The objection is sustained.

The WITNESS. It was common knowledge.

The COURT. The objection has been sustained.

By Mr. STAVIS:

Q. And, Mr. McSurely, did Mr. Brick tell you that——

Mr. BRESS. Objection, irrelevant.

The COURT. The objection is sustained.

By Mr. STAVIS:

Q. Did Mr. Brick identify the documents that he wanted you to bring back in response to the subpoena with which you had been served that day?

Mr. BRESS. Objection, irrelevant.

The COURT. You may answer the question.

[652] The WITNESS. Mr. Brick——

The COURT. That can be answered yes or no, Mr. McSurely.

By Mr. STAVIS:

Q. Did he identify them?

A. He identified them in general.

He said this was in general what the McClellan Committee wanted.

Of course, they had already had it for a year and a half.

The COURT. This might be an appropriate time for the luncheon recess.

You may step down.

We will recess for luncheon at this time.

Please return to the courtroom at two o'clock.

Do not discuss this case amongst yourselves or with anyone on the outside and keep an open mind until you have heard all the evidence, the arguments of counsel and the instructions of the Court and do not read anything in the newspapers or listen to anything on the radio or television in connection with this trial.

You may return at two o'clock.

(Whereupon, at 12:55 p.m., Court adjourned to reconvene at 2:00 o'clock p.m., the same day.)

[653] AFTERNOON SESSION

(Defendants present in the courtroom.)

The COURT. Are we ready to bring the jury back?

Mr. STAVIS. Yes.

(Whereupon, the jury entered the courtroom.)

Whereupon ALAN McSURELY resumed the witness stand and having been previously duly sworn, was examined and testified further as follows:

FURTHER DIRECT EXAMINATION

Mr. STAVIS. Would you read the last question and answer to the jury?

(Whereupon, the last question and answer was read to the jury.)

By Mr. STAVIS:

Q. Did he identify it?

A. He identified it in general.

He said this is in general what the McClellan Committee wanted and of course they already had it for a year and a half.

Q. Now, had you, Mr. McSurely, ever consented to the McClellan Committee or Mr. Brick's possession of these documents which were returned to you on November 8, 1968, and which were listed in Defendants' Exhibit 4?

A. Of course not.

[654] Q. In fact, you had gone to Court to get them back.

The COURT. Objection sustained.

Let's not lead the witness.

By Mr. STAVIS:

Q. Did you take any legal action to get them back?

Mr. BRESS. I object.

The COURT. The objection is sustained.

By Mr. STAVIS:

Q. Did you receive these documents back as a result of any Court order?

Mr. BRESS. I object.

The COURT. The objection is sustained.

The WITNESS. Yes.

The COURT. That last answer will be stricken, members of the jury.

By Mr. STAVIS:

Q. Now, some of the items which were listed and which were read to you, they were personal and intimate letters of your wife or to your wife?

Mr. BRESS. I object.

The COURT. The objection is sustained.

By Mr. STAVIS:

Q. Now, did you——

The COURT. You know how to phrase your questions, Mr. Stavis.

[655] Mr. STAVIS. Excuse me just a moment, Your Honor.

The COURT. Yes.

By Mr. STAVIS:

Q. I call your attention to item 141,—140, "Western Union Press Message dated October 9, 1964, addressed 'Dear Young Lady,' signed 'P'."

Had you ever seen that before November 8, 1968?

Mr. BRESS. I object.

The WITNESS. No.

By Mr. STAVIS:

Q. I call your attention—

The COURT. Will counsel come to the Bench, please.

(At the Bench:)

The COURT. I have allowed you latitude in letting you introduce this Exhibit.

You assured me you would not go over these individual items.

Now, it has taken a half hour in reading it to the jury and now you are singling out and doing what you assured the Court you were not going to do.

Mr. STAVIS. I am not going contrary to that.

The COURT. What do you propose to do?

Mr. STAVIS. I want to call his attention to two or three items and ask whether he had ever seen those items prior to that.

[656] Mr. BRESS. Irrelevant.

The COURT. If it is two or three you may proceed.

(In open Court:)

By Mr. STAVIS:

Q. I call your attention to Item No. 11, a letter dated—Item No. 11, "Letter dated October 22, 1964, addressed, 'Dearest M', from 'Jack.'"

Had you ever seen that prior to November 8, 1968?

A. No.

Q. I call your attention to Item 13, a "Letter dated October 13, 1964, addressed to, 'Dearest M,' from 'Jack.'"

Had you ever seen that item before November 8, 1968?

A. No.

Q. I call your attention to Item 74, "Letter dated March 18, 1965, addressed 'Dear Margaret' signed with initials 'M.C.'"

Had you ever seen that before November 8, 1968?

A. No.

The COURT. Will counsel come to the Bench?

(At the Bench:)

Mr. STAVIS. That is it.

The COURT. All right.

• • • • • •

[696] • • • MARGARET MCSURELY was called as a witness by the Defendants and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. STAVIS:

[697] Q. Now, Mrs. McSurely, what is your full name?

A. Margaret Herring McSurely.

Q. Can you talk a little louder, Mrs. McSurely and talk into the microphone.

A. Okay. Margaret Herring McSurely.

Q. And Herring was your maiden name?

A. Right.

Q. And where and when were you born?

A. I was born in Ashland, Kentucky, in 1936.

Q. And where were you brought up?

A. I was raised in Winston-Salem, North Carolina.

Q. And where did you go to school?

A. I went to high school and to Wake Forest College for a year and a half.

Q. And what did your father do?

A. He was a Baptist preacher.

Q. Where?

A. Well, Winston-Salem all the time I was growing up and after that, he moved to Jackson, Mississippi and Nashville, Tennessee and now he is living in Charlotte and my mother is living there, too.

Q. Have your father and mother been with you throughout this trial?

A. Yes.

[698] Q. Mrs. McSurely, has Mr. and Mrs. McSurely been here, too?

A. Well, Al's father is dead, but his mother has been here.

Q. Now, when were you first married?

A. Well, I got married the first time in 1955.

Q. Any children born by that marriage?

A. I had two sons.

Q. And where did you first—that marriage ended up in divorce?

A. Yes, we were married about seven years.

Q. Now, when did you first move to Washington?

A. Well, I lived in Washington the first time with my first husband and we moved away and then we moved back here about, I think it was 196— 1960. It was just after Kennedy was elected.

Q. Did you work here in Washington?

A. Yes, I did.

Q. What sort of work did you do?

A. I did secretarial work.

Q. And for whom did you work?

A. I started out working for Senator Stephen Young of Ohio and then I worked for Drew Pearson. I worked for Drew Pearson the newspaperman.

Q. How long did you work for Drew Pearson?

[699] A. Oh, about two years.

Q. And did you know John Brick before you met him?

A. Yes, I did.

Q. In Kentucky?

A. Yes, I did.

Q. How did you know him?

A. He was married to the secretary of a psychiatrist I was going to for therapy.

Q. When was that?

A. About 1963.

Q. And that was Mrs. John Brick and were they then married?

A. Yes.

Q. What is the name of your psychiatrist?

A. Dr. McKenzie.

Q. And during the time that you were a patient of Dr. McKenzie, were you then employed by Mr. Pearson?

A. Yes, I was.

Q. And did you talk to Mrs. Brick about her husband?

A. Yes. All she told me was where he was working.

Q. And did he—did you see the reports typed by Mrs. Brick of your interviews with the doctor?

A. No.

Q. Of your interviews with Dr. McKenzie?

Mr. BRESS. I object to that as leading.

[700] The COURT. Try not to lead.

By Mr. STAVIS:

Q. Did you see a report by Dr. McKenzie—did she discuss with you the matters that you discussed with Dr. McKenzie?

Mr. BRESS. I object.

The COURT. The objection is sustained.

By Mr. STAVIS:

Q. When did you leave Washington?

A. I left Washington after the Democratic Convention of 1964 to go to Mississippi to work with Black people.

Q. Who did you work with specifically?

A. Well, I worked with the Freedom Democratic Party and that was on the challenge to the Congressional, it was—on the challenge to the seating in Congress of a Congressman that had been illegally elected by excluding Black people from voting.

Q. And what year was that?

A. That challenge was in January of 1965.

Q. And did you subsequently move back to Washington?

A. Yes, I moved back in the early winter of 1966. That is January or February.

Q. And what did you do then?

A. I went to work for UPO.

Q. Is that when you met Alan?

A. Yes.

[701] Q. Where you both working then at UPO?

A. Yes.

Q. And in due course you did get married?

A. Yes.

Q. When was that?

A. In the spring of '67.

Q. And after you got married, did you then move to Kentucky?

A. Yes, we moved to Pikeville.

Mr. STAVIS. Your Honor, there has been a great deal of talk about Kentucky and the surrounding country.

We have prepared a map. Perhaps it will be of some assistance in fixing these locations.

It just shows Kentucky, Tennessee, shows Pikeville, and it shows Nashville that Senator McClellan was talking about and it shows Ohio and here is Virginia.

Mr. BRESS. It is irrelevant.

The COURT. Do you have any objection to it?

Mr. BRESS. No real objection, but I think it is——

The COURT. It will be marked as an Exhibit.

Mr. STAVIS. The jury may want to know where the mountainous region is and what it looks like on the map.

Mr. BRESS. Your Honor, may we approach the Bench?

The COURT. Yes.

(At the Bench:)

[702] Mr. BRESS. This Exhibit is not for the purpose of teaching geography to the jury by letting them know what the relationship is.

It is obviously being used for the purpose of doing more.

What is being done is to show the operation of this land in the coal fields and the mineworkers area and that sort of thing, and for that purpose, I think it is not admissible.

The COURT. Well, I'm going to admit the Exhibit but I don't want any more specific reference to it.

Mr. STAVIS. Mr. Bress is trying to keep from the jury Mrs. McSurelys background and the kind of person she is.

Mr. BRESS. I think you have gone into Mrs. McSurely's background far too much.

(In open Court:)

(Whereupon, Defendants' Exhibit No. 5 was marked for identification and received into evidence.)

By Mr. STAVIS:

Q. And do you recall the date when you moved to—to Pikeville?

A. Yes, that was April 1st, 1967.

Q. How long did you live in Kentucky?

A. Oh, in Kentucky we lived until last July.

Q. How long did you live in Pikeville?

A. We lived in Pikeville until our house got dynamited [703] one night and almost killed all of us including the baby.

Q. What date was that?

A. That was at one o'clock in the morning on December 13, 1968.

Q. When was your baby born?

A. December 29, 1967.

Q. Now I refer you to the date of November 8, 1968, and that was the date on which there was some testimony about you having been served with a subpoena.

Is that correct?

A. Right.

Q. Do you remember that date?

A. Yes.

Q. Now, do you remember seeing your husband Alan in conversation with Mr. Brick.

A. Yes, I do. They were——

Q. How long did that conversation last?

A. Oh, I guess it was about a couple of hours.

It seemed like over a long time.

Q. Where were you at the time that they were having this conversation?

A. Well, I was in the jail cell looking over the truckload of stuff and I would walk by and look over Alan's shoulder while —see, Alan and Mr. Brick were going down this list and they had the original of the letter and they had the Xerox copy [704] of a letter that had been Xeroxed and they were checking them off.

Q. You, of course, knew that Mr. Brick had some of your papers, is that correct?

A. Yes.

Q. Now, prior to the time that Mr. Brick showed you the list, did you know exactly which papers he had taken?

A. No, I didn't.

Q. Now, there are a number of items here which go back to 1964 and what I would like to ask you is whether you knew that those items had even been—had been in your possession when the State officials seized your property on August 11, 1967?

Mr. BRESS. I object. Irrelevant.

The COURT. She may answer.

The objection is overruled.

By Mr. STAVIS:

Q. I want you to look specifically at Items——

The COURT. Wait a minute. That question can be answered yes or no.

By Mr. STAVIS:

Q. Did you know whether or not—did you know that some of these personal items had remained in your possession when your papers and files and documents were seized in August, August 11, 1967?

[705] A. Well, I couldn't remember everything I had.

I had a lot, you know. I kept a lot of things, I guess that I should not have kept and they were, you know, stuck back in drawers and you don't expect people to come in and—maybe like you would have a box of stuff in a closet and what not and you just put it back in there and you forget what you all have in it.

I didn't realize that I had all of this stuff.

Q. Now, without necessarily reading what the items are, would you look at the Items No. 140, 165 and 217—140, 165, 201 and 217 and tell me whether you had remembered that those items had been kept by you?

Mr. BRESS. I object. Irrelevant.

The COURT. The objection is overruled. She may answer.
The WITNESS. What was that one again?
The COURT. 140, 165, 201 and 217.
The WITNESS. Yes.
Mr. STAVIS. All right.

By Mr. STAVIS:

Q. Had you remembered that you had had those items on August 11, 1967?
A. No, I didn't think about it.
Q. Had you ever revealed those items to your husband?
A. Oh, no.
[706] Q. On August 11, 1967—strike that.
Had you kept a personal diary prior to August 11, 1967?
A. Yes, I did.
Q. Had that been seized on that date?
A. Yes, it was.
Q. Was that finally returned to you on that date?
A. Yes.
Q. What was yours and Alan's reaction to Mr. Brick returning these personal letters?
Mr. BRESS. I object, Your Honor. It is irrelevant.
The COURT. She may answer.
The objection is overruled.
The WITNESS. I was horrified.

By Mr. STAVIS:

Q. What was Alan's reaction?
A. He was very angry.
Mr. BRESS. I object. Hearsay.
The COURT. The objection is sustained.

By Mr. STAVIS:

Q. What did you observe as to his reaction?
A. I observed that he was extremely angry at Mr. Brick.
Q. Did you hear Mr. Brick make comments about some of these personal items?
A. Yes.
Q. Would you say these comments were flattering or—
[707] Mr. BRESS. I object.
The COURT. The objection is sustained.

By Mr. STAVIS:

Q. Do you recall what those comments were?

Mr. BRESS. Irrelevant, Your Honor.
The COURT. I will sustain the objection to that.

By Mr. STAVIS:

Q. Do you recall your appearance at the hearing in March of 1969?
A. Yes.
Q. Do you remember hearing Senator McClellan read a statement?
A. Yes.
Q. Did that statement tell the truth of the seizure of your records by the State officials?
Mr. BRESS. Irrelevant, Your Honor.
The COURT. The objection is sustained.

By Mr. STAVIS:

Q. What happened on August 11, 1967?
Mr. BRESS. Objection, Your Honor. The United States Government is not affected by what happened on that date.
The COURT. The objection is sustained.
Mr. BRESS. It has nothing to do with this case.

By Mr. STAVIS:

Q. Did you on October 8, 1967 know that Mr. Brick had [708] come to Pikeville and taken the records which had been seized from you on August 11, 1967?
A. No, I didn't.
Q. When did you first find out that Mr. Brick had taken the records—the records that had been seized from you on August 11, 1967?
Mr. BRESS. I submit that is equally irrelevant.
The COURT. She may answer. The objection is overruled.
The WITNESS. Well, the first time I knew it for sure is when he said it in Court.

By Mr. STAVIS:

Q. Was that December 1st, 1967?
A. I think so.
Q. And even then and not until November 8, 1968, did you know exactly what he had taken?
Mr. BRESS. Objection.
The COURT. The question is objectionable. The objection is sustained.

By Mr. STAVIS:

Q. On December 5, 1967, when he said he had taken some documents, did he reveal which they were?

A. No.

Q. When was the first time that you knew what it was that he took?

[709] A. When I saw those Xerox copies that said what he took.

Q. On November 8, is that it?

A. Yes.

Q. 1968?

A. Yes, sir, that is correct.

Q. Now, did you hear your attorney Mr. Kunstler address the Senator?

A. Several times.

Q. And did you see Mr. Kunstler hand to Senator McClellan a copy of the complaint which has been marked Defendants' Exhibit 1 for identification?

A. Yes.

Q. What was that document?

Mr. BRESS. I didn't hear you.

By Mr. STAVIS:

Q. What was that document?

Mr. BRESS. Counsel has described it as the complaint.

By Mr. STAVIS:

Q. Did you——

A. Am I supposed to answer that question?

The COURT. If you know, you may. Do you know what the document is?

The WITNESS. I don't know what he said.

The COURT. I think you are probably better qualified to say what it is than the witness.

[710] Mr. STAVIS: Let me withdraw that question.

By Mr. STAVIS:

Q. Had you worked with Mr. Kunstler in the preparation of that document?

A. Yes, we had, both of us had.

Q. Did you and Al?

A. Yes.

Q. And did that document express your own personal thoughts put in legal language by Mr. Kunstler?

Mr. BRESS. I object.

The COURT. The objection is sustained.

By Mr. STAVIS:

Q. And you saw Senator McClellan receive a copy of this document, is that correct?

A. Yes.

Mr. STAVIS. Excuse me a moment, Your Honor.

I want to get our bearings here.

The COURT. Yes.

By Mr. STAVIS:

Q. Mrs. McSurely, you remember the Chairman at Page 268 asking you whether you would produce certain documents and do you remember giving him the answer, "For all the reasons that Mr. Kunstler told you."

We are not going to produce the documents.

Mr. BRESS. Are you reading this?

[711] Mr. STAVIS: Yes.

Mr. BRESS. You are not reading it accurately.

Mr. STAVIS. Perhaps we are not looking at the same portion.

Mr. BRESS. Page 2968 now.

Mr. STAVIS. Very good.

By Mr. STAVIS:

Q. Let's try it again.

"For all the reasons which Mr. Kunstler told you, we are not going to produce the documents and I don't want to talk about it in a closed session."

Do you remember saying that?

A. Yes.

Q. And were those the reasons that were embodied in this complaint which was——

Mr. BRESS. I object.

By Mr. STAVIS:

Q. Were they embodied in the complaint which was marked as Defendants Exhibit 1 for identification?

The COURT. The objection is sustained.

By Mr. STAVIS:

Q. Well, what were the reasons, Mrs. McSurely, that you——

Mr. BRESS. The reasons the witness stated in the record.

[712] The COURT. You may proceed.

By Mr. STAVIS:

Q. Why didn't you produce the records, Mrs. McSurely?

A. Well, essentially we expressed the reasons in the complaint and that is why we had a lawyer.

Q. Perhaps you can express it in your own words.

A. Yes.

Well, in the first place, we didn't know exactly what—we didn't know exactly what it was they wanted because Mr. Brick had indicated that—that the Senator wanted—what the Senator wanted was generally what was in that bunch of Xerox letters and there were a lot of things included in that.

I could not understand what they—why he would want them.

I didn't really know exactly what he wanted and in the second place, they took out of our house the names and addresses and letters from a lot of friends who are very important people and I wasn't about to let the—to turn over and subject our friends to the same kind of harassment that we had been getting because if Senator McClellan got these names and addresses and published them, he would turn over to the Klu Klux Klan the names of our friends in the South and in the mountains and so I wasn't—I wouldn't do that to my friends.

[713] They are more important to me than that and in the third place, we had been in Court for a long time to stop the subpoenaes and just reason told us that we had the right to.

Judge Cellebreeze told us that we had the right to.

Mr. BRESS. I object.

The COURT. The objection is sustained.

You can't tell us what he told you.

By Mr. STAVIS:

Q. Apparently you can't tell us what Judge Cellebreeze told you. Continue.

A. Well, the reasons were that we were contesting this in Court.

Q. And you had been contesting this in Court since when?

A. Since it first started. Since it first started, all of this whole dirty mess.

Q. And you were then contesting it in Court, weren't you?

A. Yes.

Mr. BRESS. I object. She has answered it.

Mr. STAVIS. Your witness.

CROSS-EXAMINATION

By Mr. BRESS:

Q. Mrs. McSurely, apart from what was said in the complaint that you referred to which the Court has concluded, did you say in words anything else before the Senate Committee [714] other than what was read to the jury in this transcript of the proceedings which I read yesterday?

A. You mean is this accurate, the transcript?

Q. Yes.

A. As far as I can tell.

Q. Did you say anything to the Committee other than what is reported to have been said in this book?

Mr. STAVIS. That was answered.

The COURT. That is overruled. You may answer. This is proper cross-examination.

The WITNESS. I already answered that.

By Mr. BRESS:

Q. I know you said it was accurate.

I want to know if you said anything additional to the Committee other than what is in this book or is it so accurate that you mean to say that you said nothing else?

Is that too complex?

Mr. STAVIS. Yes.

The COURT. Rephrase your question.

By Mr. BRESS:

Q. Did you say anything to the Committee other than what was read to the jury yesterday from this book? Just answer that yes or no.

Mr. STAVIS. I object, Your Honor. I suppose that this complaint, which was not read yesterday, could be included [715] in that record.

The COURT. The objection is overruled. You may proceed. That is a proper question.

The WITNESS. Well, I thought that——

By Mr. BRESS:

Q. I will restate my question, Mrs. McSurely.

The words you used before the Committee, apart from what your lawyer Mr. Kunstler said to the Committee, did you say any words or utter any words in addition to those that were read yesterday from this transcript?

A. No, he was speaking for us.
Q. Very good.
A. He was speaking for us when he filed that complaint.
Q. Now, you did not bring any of the records called for in the subpoena to the Committee hearing on March 4, did you?
A. No.
Q. And you did not bring any of the records to the Committee at any time after that and up until noon of March 7?
A. No.
Q. And you do admit that you were served with a subpoena on November 8, 1968?
A. I was served with an invalid subpoena.
Q. I see.
I say you were served with a subpoena by the Committee on November 8, 1968?
[716] Mr. STAVIS. It was served by a Marshal, wasn't it?

By Mr. BRESS:

Q. You were served with a subpoena and the Committee served it through a Marshal.
The subpoena that has been introduced in evidence here, showing that you were served on November 8, 1968, you admit you were served, don't you?
The COURT. Don't shake your head.
The WITNESS. Yes, I got that subpoena on November 8, 1968.

By Mr. BRESS:

Q. And you say that you remember Senator McClellan reading at the opening of the hearing on March 4, 1968, the so-called opening statement that you were asked about on direct examination?
A. Yes.
Q. You remember hearing that?
A. Yes.
Q. You understood what he said, did you not?
A. I didn't agree with what he said.
Q. I didn't ask you that.
A. I understood his words, yes.
Q. Did you understand the meaning of the words?
A. Yes.
Q. You were aware then of what he was talking about?

[717] A. Yes, he was expressing his views.
Q. You were aware of what he was talking about, whether you agreed with him or not?
A. Right.
Q. And you were aware that the Committee was conducting a hearing investigating riots and civil disorders, were you not?
A. I was aware that some of them thought that is what they were doing.
Q. Do I understand you that in the presence of this jury to be telling me that you don't believe that they were engaged in an investigation of riots and civil disorders pursuant to the resolution of the Senate?
A. I don't think they were doing a good job.
Q. I didn't ask you whether or not they were doing a good job. I asked you if you understood that that is what they were pretending to do.
Mr. STAVIS. That is the particular point, Your Honor.
The COURT. Excuse me.
We will have no further outbursts in the courtroom.
Mr. STAVIS. I object. Mr. Bress is arguing with the witness.
The COURT. It is proper cross-examination and the objection is overruled.
You may proceed.
[718] By Mr. BRESS:
Q. Do you understand my question, Mrs. McSurely?
Mr. STAVIS. What was the question?
Mr. BRESS. I will rephrase it.
Mr. STAVIS. Why don't we just have it re-read, Mr. Bress.
The WITNESS. Yes.
Mr. BRESS. Very well.
(Whereupon, the last question was read.)

By Mr. BRESS:

Q. And did you understand that what they thought they were doing was investigating riots and civil disorders in the United States under a mandate of the United States Senate?
A. That is what they thought they were doing.
Q. You didn't agree with them, though, did you?
A. They were not really doing that.
Q. I said you didn't—you didn't agree with them in what they were doing?
A. In reality, they weren't really investigating the riots.

Q. And is that a factor that prompted you not to produce the records?

A. That—no, I told you why I didn't produce the records.

Q. All right.

[719] I am asking you now is the fact that you disagreed with their way of investigating riots, is that a reason why you give now or that you relied upon for not producing the records?

Mr. STAVIS. I object. The question has been asked and answered.

The COURT. This is cross-examination. That is a proper question.

The WITNESS. I already told you all the reasons why I didn't turn them over.

By Mr. BRESS:

Q. I am asking you if that was one of them?

A. No.

I think I have plenty of reasons for not turning them over.

Q. So you did not fail to turn over the records because you disagreed in the manner in which the Senator was investigating riots?

A. I didn't——

Mr. STAVIS. Are you clear as to the question?

The WITNESS. No.

The COURT. Rephrase the question.

Mr. STAVIS. It has a double negative.

By Mr. BRESS:

Q. Your refusal to produce the records was not motivated [720] because of any disagreement with you on the way Congress was going about its business?

Mr. STAVIS. I object

The COURT. The objection is overruled. You may answer.

The WITNESS. In other words, I disagreed with how they were——

Are you asking me if I disagreed with how they were running the Committee?

The COURT. Read the question back.

(Whereupon, the question was read.)

The WITNESS. Yes, I vehemently disagreed with the way they were going about this.

The COURT. Read the question again.

(The question was read.)

The WITNESS. No, I already—I didn't disagree with what they were—how they were doing that, but that wasn't the reason why I didn't turn the stuff over.

The reason why was because I wasn't going to hurt my friends and I wasn't going to—I didn't think they had a right to my personal papers and I have already given you all the reasons.

By Mr. BRESS:

Q. Your refusal to deliver the records then was an intentional refusal?

[721] Mr. STAVIS. What is that, Your Honor?

By Mr. BRESS:

Q. Your refusal to deliver the records then was an intentional refusal?

Mr. STAVIS. I object.

The COURT. The objection is overruled. You may answer.

The WITNESS. Well, we filed a lawsuit.

The COURT. You can answer that question yes or no.

The WITNESS. What was the question?

The COURT. Read the question back, please.

(Whereupon, the question was read.)

The WITNESS. On the basis of all those other reasons, of course, we made the decision not to do it.

By Mr. BRESS:

Q. You intended to refuse to produce for whatever reasons you may have already told us, is that correct?

A. Constitutional reasons.

Q. For whatever reasons you have already given us, it was your intention and intent to refuse and you had made up your mind to do that before you went to the Committee?

A. Until it was settled in Court, right.

Q. And that act on your part was deliberate, was it not?

A. Yes.

Mr. BRESS. That is all.

• • • • •

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 516–69

ALAN MCSURELY, ET AL., PLAINTIFFS

v.

JOHN L. MCCLELLAN, CHAIRMAN, ET AL., DEFENDANTS

DEFENDANTS' MOTION FOR RECONSIDERATION OF ORDER FILED JUNE 12, 1973 OR, ALTERNATIVELY, FOR CERTIFICATION PURSUANT TO 28 U.S.C. 1292 (b)

The defendants McClellan, Adlerman, O'Donnell and Brick, through their undersigned attorneys, hereby move for (1) reconsideration of the Court's order filed June 12, 1973, denying defendants' motion to dismiss or for summary judgment or, in the alternative, (2) request that the Court certify, pursuant to 28 U.S.C. 1292(b), the issue whether the defendants are officially immune with respect to the allegations in the complaint against them. This motion is based, in part, on the recent decision of the Supreme Court in *Doe* v. *McMillan*, ———— U.S. ———— (No. 71-6356, May 29, 1973), 41 U.S.L.W. 4752. In support of this motion, the Court is respectfully referred to the defendants' memorandum of points and authorities attached hereto.

Respectfully submitted.

HARLINGTON WOOD, Jr.
Assistant Attorney General,
HAROLD H. TITUS, Jr.
United States Attorney.
IRWIN GOLDBLOOM
RAYMOND D. BATTOCCHI,
Attorneys,
Department of Justice,
Attorneys for Defendants.

Filed JUNE 27, 1973.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 516–69

ALAN MCSURELY, ET AL., PLAINTIFFS

v.

JOHN L. MCCLELLAN, CHAIRMAN, ET AL., DEFENDANTS

NOTICE OF APPEAL

Notice is hereby given that the federal defendants, John L. McClellan, Jerome S. Adlerman, John Brick, and Donald F. O'Donnell, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the orders entered in this case by the district court on June 12, 1973 and July 9, 1973.

RAYMOND D. BATTOCCHI,
Attorney,
Department of Justice,
Washington, D.C. 20530,
Attorney for Federal Defendants.

Filed AUGUST 6, 1973.

JAMES F. DAVEY, *Clerk.*

U.S. GOVERNMENT PRINTING OFFICE: 1977